LIM BOON NEO v. ARUMUGAM & ANOR.

[A.C.J. (Lai Kew Chai J.) November 13, 1984]
[Singapore – District Court Appeal No. 87 of 1980]

Landlord and Tenant – Rent-controlled premises – Grant of oral tenancy by husband of owner – Irresistible inference – Re-delivery of possession of premises – Protected tenant – Control of Rent Act (Cap. 266).

In this appeal the question for determination was whether in 1966 or early 1967 an oral tenancy of No. 20 Klang Road, Singapore (the premises) was granted on behalf of the late Perumal Ramayee by her husband in favour of the partnership firm of Tithi Vinayagar Co. (the Firm) at the monthly rent of $47.00. The appellant is the surviving widow of one Sarangapany and is the executrix and sole beneficiary of his Will for which probate was issued. Sarangapany was an equal partner in the firm with one Renganathan, the husband of the late Perumal who bought the premises in 1962. When Renganathan died in 1973, Sarangapany succeeded to the share of Renganathan in the Firm. In 1974 Sarangapany died as the sole-proprietor of the Firm. The appellant called an accounts clerk to confirm that in 1966 or early 1967 he was instructed by Renganathan to write in the accounts the charging of the "rent" at $47 per month.

Held, allowing the appeal: (1) the inference was irresistible that Renganathan had agreed on behalf of his wife Perumal to grant an oral tenancy to the Firm at the rent of $47 per month;

(2) the appellant was therefore a protected tenant of the premises within the ambit of the Control of Rent Act.

(3) the respondents were ordered to re-deliver possession of the entire premises to the appellant.

DISTRICT COURT APPEAL.

Karuppan Chettiar (*Dr. Myint Soe* with him) for the appellant.

P. Balagopal for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J.: At the end of the trial on November 7, 1980 the learned District Judge gave judgment for the respondents and ordered the appellant to deliver up vacant possession of the premises known as No. 20 Klang Road, Singapore (hereinafter referred to as "the premises") on the ground that she was a trespasser of the ground floor of the premises. She was ordered to pay mesne profit. One Ramasamy, who was occupying the first floor of the premises, was also ordered to quit and pay mesne profit. Ramasamy is not a party in the present appeal.

An appeal was lodged on November 15, 1980. The learned District Judge delivered his grounds of decision almost three years later. At the conclusion of the hearing of the appeal before me yesterday, I allowed the appeal with costs here and below to be taxed, set aside the judgment of the learned District Judge and ordered the respondent to re-deliver possession of the entire premises to the appellant. I now give my reasons.

The question for determination was whether in 1966 or early 1967 an oral tenancy of the premises was granted on behalf of the late Perumal Ramayee by her husband in favour of the partnership firm of Tithi Vinayagar Company. (hereinafter referred to as "the Firm") at the monthly rent of $47.

I have to say something about the parties, their derivative rights and the relations of the parties. The appellant is the surviving widow of one G. Sarangapany ("Sarangapany") and is the executrix and sole beneficiary of his Will for which probate was issued on May 17, 1984. At all material times, Sarangapany was an equal partner with one S.A. Renganathan in the Firm which were trading in textiles. S.A. Renganathan ("Renganathan") was the husband of the late Perumal Ramayee who had bought the premises in 1962. On May 2, 1973 Renganathan died and upon his death Sarangapany, under the written terms of the partnership, succeeded to the share of Renganathan in the Firm.

On September 18, 1973 Madam Perumal Ramayee died and the respondents, who are the two eldest sons, extracted the Letters of Administration of her estate on July 24, 1974.

On March 16, 1974 Sarangapany, the surviving partner in the Firm who had succeeded to the share of Renganathan in the Firm died as the sole-proprietor of the Firm. Under his Will his widow, the appellant, became the sole beneficiary of his estate and took over the whole of the business of the Firm.

If an oral tenancy was granted, as the appellant contended, then the appellant is a protected tenant of the premises which were agreed to be "premises" within the ambit of the Control of Rent Act. If no oral tenancy was granted, then the respondents, who are the personal representatives of the owner of the premises, are entitled to possession of the same.

In analysing the evidence and the grounds of decision of the learned District Judge, I should say

at the outset that with both Sarangapany and Renganathan dead at the time of the trial, no direct oral evidence was available. One has to look at the contemporaneous records and such evidence as there were from any witness directly bearing on the issue.

As I had stated earlier, the late Perumal Ramayee had bought the premises, a two storey shophouse, in 1962. After the purchase, she stayed on the first floor with the children and her husband, Renganathan. Renganathan was running the Firm, with very little participation from Sarangapany. In July 1966 she moved out of the premises. During her stay there, the Firm had stored textiles on the ground floor of the premises. The Firm had rented from her another shophouse in Tanjong Pagar Road and known as Nos. 199 and 199A.

The appellant in evidence produced an accounts clerk, DW3, who confirmed that in 1966 or early 1967 he was instructed by Renganathan to write in the accounts the charging of the "rent" at $47 per month. The accounting records admitted into evidence all showed that rent was charged at this rate until 1971 when for that year and for 1972 it was raised to $150 per month. All the rents payable were treated as paid as they were in every year credited into the current account of the late Madam Perumal Ramayee which was maintained by her husband on her behalf in the Firm. Payments were made by the Firm on her behalf in respect of her outgoings such as quit rent, property taxes for her properties in Tanjong Katong Road and for the insurance premia for the premises. The public accountant of the Firms confirmed that the accounts were accurate except for some fictitious sales and purchases of textiles.

The learned District Judge took into account the opinion of DW3 that "the entries in the account books of all rentals paid in connection with (the premises) are all fictitious entries", which opinion or conclusion was elicited in his cross-examination. But when one examines the reasons for DW3's rather startling conclusion, one sees that the first reason was that it was made on the insistence of the late Sarangapany. The insistence of Sarangapany could not by itself make the entries year after year fictitious. Further, in the examination-in-chief of DW3, he had said as follows:

"In fact Mr. Renganathan himself was objecting to making this particular entry and he only agreed to do so after much persuasion by Mr. Sarangapany. Eventually both of them asked me to make the entry as it would be useful for income tax purposes."

One must evaluate this vital piece of evidence against the factual evidence that the two partners of the Firm were in possession of the premises since July 1966. After the departure of Renganathan's family from the first floor of the premises, the abovementioned Ramasamy had moved into the first floor with his wife who had arrived from India. Now, Ramasamy was an employee of the Firm and he had agreed to watch over the textiles stored in the premises.

Against this factual matrix, I found the inference was irresistible that indeed Renganathan had on behalf of his wife agreed to grant an oral tenancy to the Firm at the rent of $47 per month. There was nothing sinister or fictitious about the accounting entries. They were properly deductible items of expenditure so far as the Firm was concerned for "income tax purposes". I was of the view that the learned District Judge had misdirected himself when he appeared to have accepted the conclusion of DW3 without question, which acceptance was clearly erroneous.

I should generally refer to the grounds stated by the learned District Judge regarding the previous inconsistent pleadings of the appellant, which were amended, the owner-occupier's return filed by Renganathan on behalf of his wife and the absence of rent receipts. Every piece of those evidence was innocuous and had no bearing whatsoever on the issue before the court. I was of the view that the learned District Judge had erroneously laid great store on the most unfavourable inference on each piece of these evidence. But each piece of these evidence was capable of an explanation which was not inconsistent with the fact that a tenancy had been contracted.

Where the contemporaneous accounts of the Firm, approved by Renganathan year after year from 1967 to 1972, show that rent was paid for the premises at $47 per month up to 1970 and at $150 per month for 1971 and 1972 and where the firm was given possession of the entire premises, with its employee, Ramasamy, living on the first floor, and where Renganathan was clothed with all authority to deal with the premises on behalf of his wife, the owner of the premises, the inference is irresistible that an oral tenancy was granted to the Firm in 1966 or early 1967.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Chan & Ling.*